

## Labor Responsibility Checklist for Labor Relations Officers

Pursuant to the President's Executive Orders (EO) 18836 (Collective Bargaining), 13837 (Official Time), 13839 (Removal Procedures), and the updated Secretary's Memorandum, 0176-021, *OneUSDA – Foundational Responsibilities for Labor Relations*, every USDA agency/office must send a notice and the completed checklist below to the USDA Labor Relations Officer (LRO), OGC, and to the relevant Under or Assistant Secretary or staff office head at least 30 calendar days prior to determining whether to open negotiations for a new CBA or to rollover an existing CBA.

Should your review disclose that any collective bargaining agreement does not conform to law, Executive Orders, Government-wide rule/regulation, or Departmental directives or policies, then the Department expects that your agency will take steps to re-open the agreement in accordance with its terms, and renegotiate it to bring it into compliance. Please note that OHRM will continue to conduct agency head reviews on all labor agreements that rollover once the window for reopening the contract has expired.

To that end, \_\_\_\_\_ [Name of POC], is formally designated to execute the checklist below:

### **I. Collective Bargaining Agreement (CBA) Preparation**

#### **A. Internal - Agency Preparation**

1. \_\_\_\_\_ Reviewed a copy of the relevant collective bargaining agreement (CBA)(s)?
2. \_\_\_\_\_ What are the next dates for reopening the CBA?
3. \_\_\_\_\_ Has the Agency designee consulted OGC and OHRM, and notified the relevant Under or Assistant Secretary, staff office, or mission area head at least **30 calendar days** prior to determining whether to open negotiations for a new CBA or to rollover an existing CBA?
4. \_\_\_\_\_ If the Agency is contemplating changes not already bargained for or "covered by" the existing Agreement, has the Agency designee consulted with OGC and OHRM?
5. \_\_\_\_\_ Does the current agreement have any apparent conflicts with law, Executive Orders, Government-wide rules or regulations, or Departmental directives or policies? If so, note the pertinent language and explain the apparent conflicts.

6. \_\_\_\_\_ Does the current agreement contain any language regarding partnership councils, labor-management forums that were established in accordance with Executive Order (EO) 13522? If so, note the pertinent language and any other agreements establishing a council/forum.
7. \_\_\_\_\_ Does the current agreement contain any language regarding pre-decisional involvement? If so, note the pertinent language and make such effort to negotiate out of the agreement any requirement for partnership, pre-decisional involvement, or labor-management forums consistent with EO 13812, Revocation of Executive Order Creating Labor-Management Forums. See also EO 13836 Sec. 5(e).
8. \_\_\_\_\_ Has the Agency designee consulted with OGC and notified the relevant Under or Assistant Secretary, staff office, or mission area of any apparent conflicts with any relevant USDA DR or the Secretary's updated OneUSDA – Foundational Responsibilities for Labor Relations.
  - a. Has the relevant Under or Assistant Secretary, or staff office head and USDA Chief Human Capital Officer concurred with the decision whether to approve any CBA provision containing apparent conflicts with any relevant USDA DR or the Secretary's updated OneUSDA – Foundational Responsibilities for Labor Relations?
  - b. Has the Agency provided justification for any such concurrence?
9. \_\_\_\_\_ In the current agreement, how many steps are provided for the negotiated grievance procedure? Determine if there are steps to the grievance process that could be removed to reduce the time to process and resolve a written grievance. OneUSDA – Foundational Responsibilities for Labor Relations.
10. \_\_\_\_\_ Does the current agreement permit the filing of an oral or informal grievance as opposed to the filing of a written grievance? The updated OneUSDA – Foundational Responsibilities for Labor Relations at Sec. 2(c)(8) communicates an expectation for written grievance to expedite the resolution of grievances.
11. \_\_\_\_\_ Does the current agreement allow the union more than 15 days to request negotiations? If so, note the number of days and strive to reduce the time to provide notice under the terms of any new agreement. See updated OneUSDA – Foundational Responsibilities for Labor Relations.



12. \_\_\_\_\_ For formal discussions, does the current agreement require the use of official time that is reasonable, necessary and in the public interest? If not, strive to negotiate use of Leave Without Pay in such instances. See EO 13837 Sec.3(a).
13. \_\_\_\_\_ Does the agreement contain matters enumerated in 5 U.S.C. §7106 (b) (1), generally referred to as permissive topics for bargaining? If so, note the pertinent language, and be aware that when an agreement expires, agencies are expected to terminate permissibly negotiated provisions entered into by management. To that end, agencies may not negotiate over the substance of the subjects set forth in 5 USC 7106 (b)(1). See EO 13836 Sec. 6.
14. \_\_\_\_\_ Ensure senior management and supervisors are participating in the agency's negotiating team. EO 13836, Sec. 4(b).

## **II. CBA Negotiations**

### **A. Bargaining Deadlines & Reporting**

1. \_\_\_\_\_ Established a negotiating period of no more than six (6) weeks to achieve ground rules, and a negotiating period of no more than four (4) to six (6) months for a term CBA. EO 13836, Sec. 5(a).
2. \_\_\_\_\_ Notify the agency head when negotiation reaches six (6) months, and then monthly thereafter, with an accompanying status report. EO 13836, Sec. 5(b).
3. \_\_\_\_\_ At the nine (9) month negotiation period, notify the Agency Head that he/she must notify the President, through the Director of OPM, that negotiations are lasting longer than nine (9) months. EO 13836, Sec. 5(b).
4. \_\_\_\_\_ If bargaining is delayed, because of a union's failure to negotiate in good faith, decide whether the team should file an unfair labor practice (ULP) complaint, or propose a new agreement and implement unilaterally should the union not offer counterproposals in a timely manner. EO 13836, Sec. 5(c).
5. \_\_\_\_\_ Take necessary steps to eliminate any bargaining approach other than the exchange of written proposals for addressing specific issues in negotiations. EO 13836, Sec. 5(e).
6. \_\_\_\_\_ Forwarded a copy of the agency's labor agreement, and its effective date, to OPM. See EO 13836, Sec. 8(a).

7. \_\_\_\_\_ Submit new term labor agreement and its expiration date to OPM within 30 days of its effective date. EO 13836, Sec. 8(a).
8. \_\_\_\_\_ Submit new arbitral awards to OPM and the USDA LRO within 10 business days of receipt. EO 13836, Sec. 8(a).
9. \_\_\_\_\_ Prepare an annual "official time" report, containing all the information set out in EO 13837, Sections 6(a)(i-v), (b) & (c) to USDA LRO for submission to the OPM.

## **B. Mandatory Proposals & Bargaining Prohibitions**

### **Negotiated Grievance Procedures**

1. \_\_\_\_\_ Ensure the management negotiation team endeavors to exclude removals for misconduct or unacceptable performance from the negotiated grievance procedure. If an agreement cannot be reached, the agency shall request the assistance of the Federal Mediation and Conciliation Service and, as necessary, the Federal Service Impasses Panel. Within 30 days after the adoption of any collective bargaining agreement that fails to achieve this goal, the agency head shall provide an explanation to the President, through the Director of OPM. See EO 13839 Sec. 3.
2. \_\_\_\_\_ Explained to the management negotiating team that the agency will not accept any proposals which would subject assignment of ratings of record or awards of incentive pay to grievance procedures or binding arbitration. EO 13839, Sec. 4(a).
3. \_\_\_\_\_ Explained to the management negotiating team that the agency will not accept any proposals that would: (1) limit the agency's discretion to use Chapter 75 procedures to address unacceptable performance, (2) require the use of Chapter 43 procedures before removing an employee for unacceptable performance, or (3) limit the agency's discretion to remove an employee without first engaging in progressive discipline. EO 13839, Sec. 4(b).
4. \_\_\_\_\_ Explained to the management negotiating team not to accept any proposal that would extend the opportunity periods for demonstrating acceptable performance for periods greater than 30 days, except when management determines that a longer period is necessary to provide sufficient time to evaluate an employee's performance. EO 13839, Sec. 4 (c).



## Official Time

1. \_\_\_\_\_ Strive to establish a negotiated union time rate of one (1) hour or less. EO 13837, Sec. 3(a).
2. \_\_\_\_\_ If management agrees to authorize a union time rate greater than one (1) hour, the agency must be able to explain to the agency head, who in turn must report this agreement/proposal to the President, through OPM, why such expenditures are reasonable/necessary/in the public interest. EO 13837, Sec. 3(b)(i).
3. \_\_\_\_\_ Furnish notification to the agency head five (5) business days in advance of presenting/accepting a proposal that would result in a union time rate of greater than one (1) hour for any bargaining unit. EO 13837, Sec. 3(b)(ii).
4. \_\_\_\_\_ Ensure the management negotiating team does not agree to any union proposal that would allow bargaining unit employees official time to engage in lobbying activities. EO 13837, Sec. 4(a)(i).
5. \_\_\_\_\_ Ensure the management negotiating team understands that any official time proposals will require employees to spend at least 75% of their paid time, each fiscal year, performing agency business or attending necessary training. And, if an employee's official time exceeds 25% in a fiscal year, the excess shall count toward subsequent fiscal years. EO 13837, Sec. 4(a)(ii)(3).
6. \_\_\_\_\_ Ensure the management negotiating team does not agree to any proposal that would allow the union free or discounted use of government property or agency resources if such free/discounted use is not generally available for non-agency business by employees when acting on behalf of non-federal organizations. EO 13837, Sec. 4(a)(iii).
7. \_\_\_\_\_ Ensure the management negotiating team does not accept any proposal that would allow employees to be reimbursed for expenses incurred when performing non-agency business. EO 13837, Sec. 4(a)(iv).
8. \_\_\_\_\_ Ensure the management negotiation team does not accept any proposal that would permit bargaining unit employees serving as union officials to use official time to file grievances. EO 13837, Sec. 4(a)(v)(1). This prohibition does not apply to: a) employees using official time to prepare for a grievance, to confer with union officials (who are prohibited from using official time for this purpose), or to present a grievance brought on the employee's own behalf; or b) employees using official time to challenge an adverse personnel action taken against them in retaliation for protected whistleblowing. See EO 13837 Sec. 4(a)(v)(1) and Sec. 4(a)(v)(2)(A) and (B).]

## **Permissive Bargaining**

1. \_\_\_\_\_ Instructed the management negotiating team not to negotiate over any of the permissive topics set forth in 5 U.S.C. §7106 (b)(1), or to engage in bargaining on any matter that management is not required to do so, e.g., proposals affecting the working conditions of managers or supervisors, etc. See EO 13836, and OneUSDA – Foundational Responsibilities for Labor Relations memo.

## **C. Procedures for OHRM & OGC Advice, Guidance & Reporting**

### **Arbitrations, Impasses, or ULPs**

1. \_\_\_\_\_ Consult with USDA LRO concerning pending Arbitrations, Impasses, or Unfair Labor Practices. See DR 4070-711 (Labor Relations). Sec. 8.
2. \_\_\_\_\_ Contact the USDA LRO before recommending to management whether to pursue a review of an FLRA decision or an exception to an arbitration award. See DR 4070-711 (Labor Relations). Sec. 8.

### **Compelling Need Assertions**

1. \_\_\_\_\_ Submit request to bargain exceptions for proposals that are inconsistent with Departmental rules or regulations in accordance with the timelines set out in USDA See DR 4070-711 (Labor Relations). Sec. 8.
2. \_\_\_\_\_ Submit requests by memorandum to the USDA LRO describing the reasons for the request for exceptions and containing the language of the specific proposal(s). See DR 4070-711 (Labor Relations). Sec. 8.

### **Negotiability Appeals**

1. \_\_\_\_\_ Notify the USDA LRO of any negotiability appeals filed by a union in response to management's allegation that a bargaining proposal is non-negotiable under the Federal Service Labor-Management Relations Statute (FSLMRS) within 3 business days. See DR 4070-711 (Labor Relations) Sec. 8.

2. \_\_\_\_\_ Submit copies of all appeal documents to USDA LRO filed by the union, and Federal Labor Relations Authority (FLRA) orders within 3 business days of receipt by management. See DR 4070-711 (Labor Relations). Sec. 8.
3. \_\_\_\_\_ Consult with USDA LRO prior to filing statements of positions with the FLRA or response to Union replies. See DR 4070-711 (Labor Relations). Sec. 8.
4. \_\_\_\_\_ Provide copies, within three business day, to the USDA LRO of all documents served on the FLRA. See DR 4070-711 (Labor Relations). Sec. 8.

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Should you have any questions, or require technical labor relations guidance, or assistance, please contact the Labor Relations Office, OHRM, or the OGC, for legal advice and support.